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SPEECH

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OF

HON. WILLIAM O. GOODE,
OF VIRGINIA,

ON THE

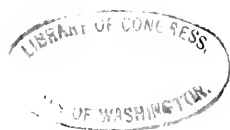
BILL TO ESTABLISH AN AUXILIARY GUARD FOR THE DISTRICT OF
COLUMBIA;

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, APRIL 19, 1858.

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SPEECH.

The House being in the Committee of the Whole on the state of the Union, and having under consideration the bill to establish an Auxiliary Guard for the District of Columbia—

Mr. GOODE said:

Mr. CHAIRMAN: The few suggestions which I propose to offer will be expressed briefly as I can. I have no essay to publish. If I had the weight of character or power of language to command the attention of the House, I should not indulge in inflammatory declamation. I should employ my strength to impress the House with a just perception of the measure on which we are called to decide.

Several days have passed since this question was opened for discussion. The debate has taken a wide range, and gentlemen have felt themselves called upon to go forth into the wide field of partisan warfare. I shall not follow their example. I shall endeavor to call back attention to the true pending question. It was just announced from the chair. The committee are called upon to pass on the comparative merits of the bill I have proposed, and the substitute for the Senate bill offered by the gentleman from New York, [Mr. Dobb.] The general objects and provisions of these plans are nearly identical. They provide for the same force, the same number of officers, and for nearly the same expenditure of money; but the regular expenditure, under my bill, will require a sum smaller, by about \$2,500, than the plan of the gentleman from New York—and to that extent I am entitled to the argument of economy, but I admit the advantage is inconsiderable. There are, however, important differences in the two propositions. My bill establishes a police court, by which offenders against the law and police regulations may be summarily tried and punished, which I regard as an actual necessity in the administration of justice in this city. At present, the prosecution of the most petty offenses is by a regular criminal prosecution, requiring an indictment by the grand jury—the minimum expense being about forty dollars, often ranging above one hundred dollars, and requiring from the Treasury an

annual appropriation far exceeding one hundred thousand dollars for the prosecution of petty offenses in the District of Columbia. A large proportion of this would be saved by the provision of my bill—a sum, perhaps, equal to the whole cost of the contemplated police force.

But the distinguishing characteristics of the two propositions are to be found in the different modes of appointment. The gentleman from New York proposes to constitute a board of commissioners to organize this police force—the board to be elected by the qualified voters of the city of Washington. Not only to be elected, but chosen in equal numbers from contending political parties. The scheme contemplates the election of two Democrats and two Know Nothings or Americans. Thus will be introduced into the organization antagonistic elements, in equal forces. The nature of the service of a police force demands promptitude, secrecy, and energy. It is indispensable it should be directed by unity of will, and executed with concert of action. The plurality of will and antagonism of purpose or of object, are utterly inconsistent with the efficiency of the police. The discrepancy of views, the conflict of opinions, and consequent delay in the deliberations and decisions of the board must effectually destroy the usefulness of a police appointed under the scheme of the gentleman from New York. There would be no more probability of accord and agreement in the consultations and decisions of such a board, than if those functions were to be performed by the gentleman from New York and myself.

Mr. BURROUGHS. May I ask the gentleman from Virginia a question?

Mr. GOODE. Not many questions.

Mr. BURROUGHS. I desire to ask the gentleman from Virginia if he does not know that the best governed cities and villages in America, to-day, are governed by men chosen in this way from the two parties?

Mr. GOODE. I do not. I should deem it impracticable for such a board to agree on anything; and the whole scheme seems utterly inadmissible. It has been recommended as calculated to free the police from partisan influences. To accomplish

this you provide, in the first instance, for a partisan election, which is to be repeated annually. You provide that Democrats and Americans shall vote together, and yet require that equal numbers of each party shall be chosen; and it is requisite that these equal numbers of unfriendly and hostile forces shall act in concert and harmoniously, to produce results at all beneficial. I can hope for nothing good or efficient from this discordant, *double-headed* monster. It is, verily, a double-headed monster, with no precedent in history, no prototype in nature, no similitude in the regions of fancy—except the *triple-headed* Cerberus, placed by mythologists as a guard at the gates of hell.

This nondescript board is obnoxious to the further objection of violating the spirit and principles of the Constitution. The power of appointment is undoubtedly executive in its very nature. And this scheme of the gentleman from New York provides for carrying into effect this executive power through the agency of a legislative commission.

With deference I submit that these objections to the plan of the gentleman from New York are unanswerable. They are entirely avoided by my plan, which I shall now proceed to explain.

My bill provides that the chief shall be appointed by the President of the United States, by and with the advice and consent of the Senate; that the captains and lieutenants shall be appointed by the Secretary of the Interior, and the men by the chief of the auxiliary guard; which I hold to be in strict accordance with the principles of the Constitution. The Constitution provides that

“The President, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of Departments.”

If, then, these be officers of the United States, the Constitution determines the appointing power. But to avoid the force of this argument, gentlemen deny that these are Federal officers; but that proposition cannot be sustained. They are certainly officers. They certainly satisfy the definition of that term. But if officers, they must be Federal officers, because they are created by act of Congress. Their duties are prescribed by act of Congress, and they are paid from the Federal Treasury. It is therefore impossible to resist the conclusion that they are Federal officers, and therefore must be appointed by the Federal Executive—by the President—by and with the advice and consent of the Senate. It is true that Congress may by law provide that such inferior officers as they think proper may be appointed by the President alone, to avoid the necessity of applying for concurrence of the Senate in so vast a number of appointments, and we may provide that the courts may appoint their own officers; and still further to relieve the President, we may provide for the appointment of inferior officers by the heads of the Departments, which is accordingly proposed in my bill. With the exceptions thus enumerated, all Federal appointments must be made by the President, by and with the advice and consent of the Senate.

The Constitution places all executive power in the President of the United States. The power of appointment is an executive power, and therefore vests in the President. In framing the Constitution, our ancestors adopted the British Constitution as their model. In England the appointing power vests in the executive Government. It is, indeed, a royal prerogative, and to attempt to usurp it, is to impinge on the prerogatives of the Crown. In this country, by the wisdom of our fathers, the appointing power is reposed in the Chief Executive of the Confederacy. Even if this be unwise, it is ordained by the founders of our system. It is not denied that the President must appoint the superior officers of Government, your military and naval commanders, the judges of the Supreme Court and of all the Federal courts; and yet it is held to be dangerous to confide to him the appointment of the chief of the police of Washington city!

Mr. MAYNARD. I want to know whether, under the act of 1850, the commissioners were appointed by the President, or by the courts of the District, in which they were to act?

Mr. GOODE. Did not the gentleman hear me say that Congress had power to provide by law for the appointment of inferior officers by the courts or by the heads of the Departments? It was precisely the proposition which I announced.

Mr. BLISS. I would like to be enlightened on one point, for it is an important one. I understand the gentleman to claim that the officers of this District are Federal officers under the Constitution.

Mr. GOODE. The officers of the corporation are municipal officers; but it is competent for Congress to create other officers in the District, who are not municipal officers, but who are, of necessity, Federal officers.

Mr. BLISS. I ask whether, under the Constitution, any difference was made between any of the local officers of the District, such as Mayor, and policemen, or any other officer?

Mr. GOODE. The office of Mayor, under the charter, is elective by the people. The office of chief of police is proposed to be regulated by this bill. If he could be deemed a municipal officer, he would be appointed by the Mayor, according to the terms of the city charter. If he be a Federal officer, as appears to me to be unquestionable, then, by the terms of the Federal Constitution, the appointment is vested in the Federal Executive. We may, by law, provide for the appointment by the Secretary of the Interior, or the head of any other Department, or in the courts; but if there be no such special provision, the appointment attaches, *ex vi termini*, in the President of the United States.

Gentlemen insist it is dangerous to invest the President with the alarming power of appointing the head of the police of a petty municipality. Under the genius of the Constitution they can trust him with the supreme power of negotiating treaties with foreign countries; they can confide to him the appointment of the whole diplomatic corps—consuls, ministers, envoys extraordinary and ministers plenipotentiary to represent the country at foreign Courts; they can trust him to appoint our Federal judges, the commanders of the Army and Navy of the United States, with the whole roll of their subordinates; they can trust

of the general command of the Army and of the United States and of the embodied militia of the several States when called into actual service; but they are thrown into a tremor when called to invest him with the dangerous and alarming power of appointing the chief of the police of the city of Washington! Verily, it seems a strong illustration of the proverb, that you "strain at a gnat and swallow a camel."

Sir, when gentlemen denounce this as an alarming usurpation; when they denounce the President of the United States as an unsafe and dangerous repository of the appointing power, I decline, myself, to offer the reply. I refuse to place my own authority, my own humble and unknown name, to be weighed in the balance against those distinguished gentlemen; but I call upon the framers of the Constitution to answer; I call upon James Madison to answer; I call upon Alexander Hamilton to answer; I call upon Gouverneur Morris, upon James Wilson, to answer; I call upon John Rutledge, upon Charles Pinkney, Charles Cotesworth Pinckney and Pierce Butler, to answer; and last, though not least, I call upon Benjamin Franklin and George Washington to answer. These, and all these, and such as these, if, indeed, there could be such, have placed it in the Constitution, have inscribed it upon the enduring records of their country, that they regard the President of the United States as the true and safe and wise and proper repository of the power of appointment. Such are the names which I bring forward to weigh in the balance against the authority of honorable gentlemen.

Sir, I pray the House to examine deliberately and dispassionately the nature of the objections urged against vesting this appointment in the President. It will be found that they rest in a great degree on personal hostility to the incumbent. Most of the Opposition have denounced him as corrupt. True, there are honorable exceptions, and among them I am happy to distinguish the honorable gentleman from Tennessee, [Mr. MAYNARD.] Sir, I have never professed myself the peculiar champion of James Buchanan; but I was pained to hear him the subject of these unjust and cruel attacks; I was pained to hear the denunciation of a man who has spent a long and honorable and distinguished life in the virtuous exercise of the social faculties, and the faithful discharge of his duty to his country—a man who has been borne by public favor through the regular gradations of public honors till he was eventually installed in the elevated and exalted position which he now adorns. I was pained to see him made the subject of attack and denunciation and vituperation, if not of slander.

Mr. BURROUGHS, again interrupting, was understood to remark, that it was not to the former life and bearing of Mr. Buchanan that exception had been taken, but to his present conduct and character.

Mr. GOODE. Let me say to the member from New York, that any man who brings himself into voluntary comparison with James Buchanan, as a man of virtue, honor, intelligence, distinction, and honorable bearing, will have occasion to deem himself fortunate if he should not suffer severely from the contrast. Sir, I call upon gentlemen to bear in mind it is now openly avowed that the objection to place the power of appointment in

James Buchanan is, that he is unworthy confidence of the country—that he is said to be the head of a rotten and repudiated Administration; that he uses the elegant and refined language of the member from Massachusetts, [Mr. COMINS.] But Mr. Buchanan became the standard-bearer of Democracy, he was exempt from these unjust imputations. Since he was elevated to his present position he is made the shining mark for the poisoned arrows of his enemies. I demand it of the House to shield an honorable man and a faithful public functionary from these rude and unhalloved assaults. I ask no member of the House to support a measure which his judgment condemns; but, in arranging this power of appointment, I call upon the House, and especially the Democracy of the House, to shield the President from aspersion and obloquy. Gentlemen can vote for my proposition over that of the gentleman from New York without being committed to its provisions. Such vote will be a mere expression of preference, and not a declaration of approval.

It was argued by a gentleman from Kentucky, [Mr. MARSHALL,] that by the charter of the city the power of appointment is vested in the Mayor of Washington, and that it will be usurpation to exert it through the President. I confess I was surprised at such an argument from such a source. The charter of the city was designed to enable the people here to manage their own local interests, and regulate their own municipal affairs. It never could have been conceived that by its enactment the Government of the United States surrendered the right and power of self-protection and self-preservation, and the rights and power of eminent domain within the limits of the District. The authority of the corporation is concurrent with that of this Government, and only concurrent as to subjects affecting particular interests of the people here. There is no point in this broad Confederacy in which this Government does not exercise a jurisdiction, either concurrent or exclusive. The several States are sovereign and supreme. They exercise supreme authority on subjects confided to their charge in our scheme of polity. Yet this Government exerts its constitutional authority within the limits of the States, on all subjects intrusted to our charge, according to the provisions of the Constitution. I have seen the illustrious John Marshall dispensing law and justice, executing the powers of a Federal judge in the same room and from the same seat, which but a day or so before were occupied by a venerable chancellor of Virginia. The States are sovereign and supreme. We derive our powers from their grant. We exercise a divided and concurrent jurisdiction with them, within the limits of their several boundaries. The corporation is subordinate and municipal; all its powers are the gift of Congress. Yet is it gravely insisted that, by the creation of this petty municipality, Congress has deprived itself of the right to organize a police here for the purposes of self-protection and self-preservation. Thus, by this argument, are we reduced to dependence on the city for the power to exercise the functions of Government.

Sir, I deny that Congress has the right to deprive itself of the power to protect itself, to protect the Government, and persons and all things dependent on the Government, or connected with

it. Government cannot divest itself of the power to accomplish the purposes of its creation. It cannot absolve itself from the obligation to protect itself, the Government, its members and employes, with the citizens of the Confederacy resorting lawfully to their seat of Government. Its obligation to protect the public property and the diplomatic representatives of foreign nations, the power to accomplish these high objects, the power to exert or to exercise the functions of government, the power to accomplish the purposes of its creation, are vested in Government by the Constitution, and imposes a binding obligation, from which Congress cannot be absolved by any act of legislation. If it had been designed by the charter of incorporation for the city of Washington to absolve the Federal Government from the force of its obligation, the act would have been simply nude.

Sir, it has been urged that Congress is under no obligation to support a police here, for the benefit and protection of the citizens of Washington, relieving them from the expense and necessity of providing a police for themselves. This argument must be respected, because it is urged by respectable gentlemen. In itself it is utterly untenable, and will be regarded by many enlightened men as founded on a very narrow and a very small prejudice. Might not the corporation retort that it is under no obligation to provide a police here for the protection of Government, and its numerous members, dependents and interests and connections? Sir, the police is not designed to secure any exclusive or even peculiar advantage to the citizens of Washington. It is intended to enable the Government well and faithfully and securely and conveniently to discharge its duties and redeem its obligations to the country. It is right the corporation should do this within its proper sphere. It is right the Government should accomplish this within its own proper sphere.

There is another view of this subject which must commend itself to every fair and candid mind. It is undeniably true that the lawlessness which prevails here is occasioned, for the most part, by the presence of the Federal Government. Our presence here congregates within the ten miles square the rowdies and ruffians who set society at defiance. I put it to the candor of every gentleman—does he not believe that if the seat of Government were removed, the city would subside into the quiet and repose of a country village? Is it not just we should provide the police, the necessity for which we create?

Mr. Chairman, I maintain it was the purpose of the framers of the Constitution to locate the seat of Government in a position to exercise exclusive jurisdiction, and to invest it with authority adequate to its own protection. It was intended to avoid the ills and avoid the possibility of conflicting jurisdiction.

Gentlemen are familiar with the history of establishing the seat of Government at Washington. At the close of the war of the Revolution, when our arms were triumphant, when the power of Britain was overthrown, and victory had perched upon our banner, the army which achieved this glorious triumph was left in a state of destitution. The time had come when that army was to be disbanded, and the veteran citizen soldier return to his long neglected home. But he was

without pay—without a cent of money in pocket—far away from his home—all tattered and torn—all wearied and worn—he was to be disbanded and turned loose upon the world, without even a settlement of his accounts. He knew not what allowance would be made for him by the country whose enemies he had conquered, and whose liberty he had achieved. Great and extensive discontent prevailed, and there was danger of a general mutiny. Never was the address of General Washington put to severer trial, but he firmly essayed the task, and his efforts were crowned with success. The spirit of patriotism was diffused through the army as an emanation from his soul. Order was restored, the army dispersed, the liberties of America established upon a lasting foundation.

At Lancaster, Pennsylvania, there was a canton of raw recruits, who refused to be appeased, and who refused to submit to be disbanded, on the terms which were rendered indispensable by the actual poverty of Government. And venting their rage, and vowing vengeance, they took up the line of march for Philadelphia, where the Continental Congress was in session. Their approach was known at Philadelphia. Congress called on the corporate authorities to provide the means of resistance and protection. The corporate authorities referred the question to the State authorities, and, pending the delay which intervened, the mutineers had reached the city. The house in which the sessions were held was surrounded by the enraged soldiery. The passways were blockaded with fixed bayonets, and a demand was made on the Council, who assembled in the same house, that the accounts should be settled in twenty minutes; and this message was accompanied with the threat that, unless their demands were satisfied, the soldiers would be turned loose, with arms in their hands, free from all the restraints of law.

By some means, of which I am not distinctly informed, the members effected their escape; and, before they dispersed in confusion, they agreed to reassemble in Princeton; and for some time their future sessions were held there. After this mortifying outrage and flagrant insult, Congress resolved that it was necessary to establish the seat of Government in a locality and under circumstances where they might exert a power and authority adequate to their own protection without dependence on municipal or State protection; and this determination seems very generally to have settled down in the public mind. At an early stage of the proceedings of the Federal convention which framed the Constitution of the United States, a resolution was adopted instructing the committee to insert a clause insuring an adequate authority in the Federal Government for all the purposes of self-protection, which resulted in the clause now found in the Constitution establishing an exclusive jurisdiction within this District.

This clause is the result of the deliberate judgment of the public mind; the deliberate purpose of the country to clothe the Federal Government with power to protect itself, and carry into effect the great purposes of its creation. And when this District was established as the seat of Government, Maryland and Virginia were severally required to surrender the rights of eminent domain, and invest Congress with power of exclusive legislation; and now it is gravely maintained that, by

in his behalf; but, in discredit of the alleged objection, I have been informed that he has always pronounced judgment of death, when justified by the finding of the jury; and in one case especially, when a pardon was granted by President Fillmore. And, after all, Mr. Chairman, the exception is founded in a ferocious and blood-thirsty spirit, demanding the relentless punishment of death. For myself, sir, I candidly admit I shall be ever willing that the capital code shall be administered in the spirit of humanity and clemency, and that its judgments may be tempered with mercy, as far as public safety will allow. I should far more admire the mild and gentle glories of a Hale than the ferocious notoriety of a Jeffreys.

Sir, some gentlemen have alluded to a painful topic, which I cannot be provoked to discuss. Even the fierce and bitter spirit of party might be expected to relent and to soften when the grave has closed upon its enemy. Let the green grass grow around the grave of one who has passed

away from sublunary scene. Let the soil be untouched by the polluted tread of malice and revenge. Sir, I refuse to desecrate the sanctuary of the dead. I refuse to disturb the sanctity of the grave. Several gentlemen have fiercely mingled in this bitter war of party politics. I decline to follow their example. If they be content with the exhibition which they have made before the country, few can have occasion of regret.

And now, sir, in conclusion, I call upon the House to rise for once superior to the littleness of party prejudice, and adopt a measure demanded by the necessity of the times. For myself, sir, I have perhaps as little personal interest in the subject as any one member of this body. I am always safe and secure from violence. Secure in the fact that I am rarely abroad under circumstances of exposure. Always secure, and doubly secure in a firm reliance on myself. Doubly and triply secure in

"The might which slumbers in a peasant's arm."

the chartering of the petty municipality of this city, we have created a rival authority here, with power superior to our own; depriving Congress of the indispensable power of self-protection, and reducing the Government of the United States to a condition of dependence on the city of Washington. Sir, I cannot believe that such an argument is of force to convince the mind of the House.

Sir, it seems to be generally agreed that the appointing power should be free from all partisan influences. All profess to desire this. Surely it is desirable; but how shall it be attained? In this free country every citizen is a politician; every public man is a partisan. Can you avoid partisan influences? Sir, to accomplish this desirable object of excluding partisan influences, the gentleman from New York provides, as the first step, to resort to a popular election for the choice of a commission, to consist of four partisan leaders—two to be chosen from each of the political parties of Washington—and this process to be continued from year to year; whilst the gentleman from Ohio, [Mr. LEITER,] in the eager pursuit of the same object of excluding partisan influences, proposes for our adoption a legislative commission, in which he names as commissioners the two partisan candidates for the mayoralty. The name of a third commissioner is quite providently inserted, whose political connection will insure the decision of every question on the side of the political party of which the honorable gentleman from Ohio is himself a distinguished, ornamental partisan leader. Other gentlemen insist that, notwithstanding the history of the past, the Mayor of the city is the best repository of the power of appointment. To this I reply the argument of a bitter experience. Through the future it will be as it has been through the past. The Mayor to select the officers and men—and they with power to elect the Mayor—remissness and relaxation of discipline will necessarily obtain, and inefficiency and worthlessness will mark the character of the police force. This is, of all the modes suggested, the most objectionable in practice.

And now, sir, I approach the close of the few remarks I proposed to offer. When I rose to explain the provisions of this bill, the House will bear me witness, I came forward coolly and deliberately, without passion or excitement. I made no appeal to party spirit or party prejudice. I confined myself strictly to a simple exposition of the provisions of the bill; and I was content to rely on the intelligence of Congress to give effect to the measure. My brief discourse was a passionless narrative. No sooner had I taken my seat than a member from Massachusetts rose in his place, and launched forth into the boisterous discussion of party politics. With slight allusion to the question of police, he felt it to be his duty to denounce the President of the United States; to arraign and denounce the Cabinet as rotten and unworthy of public confidence; to denounce and threaten the Supreme Court of the United States, and the venerable Chief Justice of this country.

Mr. COMINS. I beg to correct the gentleman from Virginia. In speaking against this bill, I made no allusion to the Supreme Court of the United States, or to the venerable Chief Justice of that court. I said justice was at fault in this city through the inefficiency of the criminal court

of this District, more than from the remissness of the police in the discharge of their duties. I in no way assailed Judge Crawford; but I alluded to the inefficiency of his court. Neither did I allude to the Cabinet of the President; but I did allude to his Administration.

Mr. GOODE. I beg pardon; I thought it was he who alluded to the decision in the Dred Scott case. It may have been some one of his competitors. I absolve the gentleman *quo ad hoc*; but only as to the Supreme Court and Chief Justice. By his own admission, he assailed the criminal court of this District; and it appears from his printed speech that he had the indelicacy to assail, by name, the honorable judge who presides in that court. I have no personal acquaintance with Judge Crawford. He has not approached me on this occasion to place me in possession of facts, on which to ground his defense here to-day. But honorable gentlemen of the legal profession—men of undoubted standing, whose good opinion is worthy to be coveted by the best of us frail human beings—men at the head of the Washington bar, distinguished ornaments of an honorable profession, and who stand opposed to Judge Crawford in his political association—have voluntarily come forward to defend him against this unjust and indelicate assault, and to authorize me to speak of him in the presence of the American Congress as an amiable man, an accomplished gentleman, a pure, a just, an able, and an upright judge, enjoying, in an eminent degree, the confidence and affection of the community in which he lives.

Gentlemen have objected particularly to the action of the court in the case of a member of Congress who was tried here for murder during the last Congress. It is painful to introduce into this discussion these delicate and distressing topics. No man could have regretted the occurrence more than did the unfortunate man himself. None more than his intimate friends. But, sir, what would gentlemen demand? The offender submitted himself to the laws of his country. He was subjected to rigorous criminal prosecution, tried and acquitted by a jury of his country, and of course discharged by the court. Would gentlemen require he should be hung by the court in defiance of the finding of the jury? But objections are taken to the opinion of the judge in expounding the law of the case. I understand the judge ruled the law to be, "that if, in a case of *mutual combat*, the jury believed the circumstances were such as to justify the prisoner in considering that his own life was in imminent peril, or that he was in danger of great bodily harm, at the moment when he struck the fatal blow, the jury would be justified in rendering a verdict of homicide *se defendendo*." Is the gentleman prepared to object to this ruling? and is he prepared to sustain such objection? I believe this has been adjudged to be law in most of the States of this Confederacy—and long, long years since, was adjudged to be law in Massachusetts.

Exception has been taken to the supposed opinions of Judge Crawford touching the abstract, speculative doctrine of capital punishment; and it has been objected that his opinions are supposed to encourage crime within the range of his jurisdiction. I have no knowledge of his speculative doctrines, and I am not at all authorized to speak

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